

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EDDIERON DEMORN SMITH,

Plaintiff,

CASE NO. 1:09-CV-26

v.

HON. ROBERT J. JONKER

CORRECTIONAL MEDICAL SERVICES,  
INC., *et al.*,

Defendants.

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**ORDER APPROVING REPORT AND RECOMMENDATION**

The Court has reviewed the Magistrate Judge's Report and Recommendation (docket # 44) and Defendant CMS's Objections to it (docket # 46). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b)(3); *see also* 28 U.S.C. § 636(b)(1)(C). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Report and Recommendation recommends that the motion for summary judgment filed by Defendants RN Hamilton, RN Smyth, RN Wilkinson, Nurse Supervisor Burdette, Warden

Berghuis, and Deputy Warden Smith (docket # 19) be granted. It concludes that (1) RN Smyth, RN Wilkinson, and Nurse Supervisor Burdette are entitled to summary judgment because Mr. Smith failed to exhaust his administrative remedies against them; (2) Warden Berghuis and Deputy Warden Smith are entitled to summary judgment because there is no respondeat superior liability under section 1983; and (3) RN Hamilton is entitled to summary judgment because a prisoner's mere disagreement with a course of medical treatment does not state a federal constitutional claim. It further recommends that Defendant CMS's motion for summary judgment (docket # 27) be granted because Mr. Smith failed to exhaust his administrative remedies against it. CMS raises a number of objections "solely to preserve its other arguments for appeal" (docket # 46 at 2). CMS does not object to the Magistrate Judge's conclusions in the Report and Recommendation or ask that this Court modify the disposition of the claims against it. Accordingly, none of Defendant CMS's objections undermine the Report and Recommendation's disposition of these motions. *Cf.* FED. R. CIV. P. 72(b)(3) (requiring a district court to resolve objections to the magistrate judge's disposition of the case).

**IT THEREFORE IS ORDERED** that the Report and Recommendation of the Magistrate Judge, filed February 8, 2010, is approved and adopted as the opinion of this Court.

**IT IS FURTHER ORDERED** that the motion for summary judgment filed by Defendants RN Hamilton, RN Smyth, RN Wilkinson, Nurse Supervisor Burdette, Warden Berghuis, and Deputy Warden Smith (docket # 19) is **GRANTED** and the motion for summary judgment filed by CMS (docket # 27) is **GRANTED**.

Dated: March 16, 2010

/s/ Robert J. Jonker  
ROBERT J. JONKER  
UNITED STATES DISTRICT JUDGE